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HOUSE BILL NO. 195

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Local Government
on February 26, 2008)

(Patron Prior to Substitute—Delegate Orrock)

A BILL to amend and reenact §§ 15.2-2201, 15.2-2241, 15.2-2260, and 15.2-2269 of the Code of Virginia, relating to subdivision plats.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2201, 15.2-2241, 15.2-2260, and 15.2-2269 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2201. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affordable housing" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

"Conditional zoning" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any property which will be principally devoted to agricultural production.

"Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

"Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features or amenities desired by the locality within the development.

"Local planning commission" means a municipal planning commission or a county planning commission.

"Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

"Official map" means a map of legally established and proposed public streets, waterways, and public areas adopted by a locality in accordance with the provisions of Article 4 (§ 15.2-2233 et seq.) hereof.

"Planned unit development" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

"Planning district commission" means a regional planning agency chartered under the provisions of Chapter 42 (§ 15.2-4200 et seq.) of this title.

"Plat" or "plat of subdivision" means the schematic representation of land divided or to be divided and information in accordance with the provisions of §§ 15.2-2241, 15.2-2242, 15.2-2258, 15.2-2262, and 15.2-2264, and other applicable statutes.

"Preliminary subdivision plat" means the proposed schematic representation of development or subdivision that establishes how the provisions of §§ 15.2-2241 and 15.2-2242, and other applicable statutes will be achieved.

"Site plan" means the proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

"Special exception" means a special use, that is a use not permitted in a particular district except by a special use permit granted under the provisions of this chapter and any zoning ordinances adopted herewith.

"Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

60 "Subdivision," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the
61 division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose
62 of transfer of ownership or building development, or, if a new street is involved in such division, any
63 division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall
64 relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation
65 of any single division of land into two lots or parcels, a plat of such division shall be submitted for
66 approval in accordance with § 15.2-2258.

67 "Variance" means, in the application of a zoning ordinance, a reasonable deviation from those
68 provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a
69 building or structure when the strict application of the ordinance would result in unnecessary or
70 unreasonable hardship to the property owner, and such need for a variance would not be shared
71 generally by other properties, and provided such variance is not contrary to the intended spirit and
72 purpose of the ordinance, and would result in substantial justice being done. It shall not include a
73 change in use which change shall be accomplished by a rezoning or by a conditional zoning.

74 "Zoning" or "to zone" means the process of classifying land within a locality into areas and districts,
75 such areas and districts being generally referred to as "zones," by legislative action and the prescribing
76 and application in each area and district of regulations concerning building and structure designs,
77 building and structure placement and uses to which land, buildings and structures within such designated
78 areas and districts may be put.

79 § 15.2-2241. Mandatory provisions of a subdivision ordinance.

80 A subdivision ordinance shall include reasonable regulations and provisions that apply to or provide:

81 1. For plat details which shall meet the standard for plats as adopted under § 42.1-82 of the Virginia
82 Public Records Act (§ 42.1-76 et seq.);

83 2. For the coordination of streets within and contiguous to the subdivision with other existing or
84 planned streets within the general area as to location, widths, grades and drainage, including, for
85 ordinances and amendments thereto adopted on or after January 1, 1990, for the coordination of such
86 streets with existing or planned streets in existing or future adjacent or contiguous to adjacent
87 subdivisions;

88 3. For adequate provisions for drainage and flood control and other public purposes, and for light
89 and air, and for identifying soil characteristics;

90 4. For the extent to which and the manner in which streets shall be graded, graveled or otherwise
91 improved and water and storm and sanitary sewer and other public utilities or other community facilities
92 are to be installed;

93 5. For the acceptance of dedication for public use of any right-of-way located within any subdivision
94 or section thereof, which has constructed or proposed to be constructed within the subdivision or section
95 thereof, any street, curb, gutter, sidewalk, bicycle trail, drainage or sewerage system, waterline as part of
96 a public system or other improvement dedicated for public use, and maintained by the locality, the
97 Commonwealth, or other public agency, and for the provision of other site-related improvements
98 required by local ordinances for vehicular ingress and egress, including traffic signalization and control,
99 for public access streets, for structures necessary to ensure stability of critical slopes, and for storm
100 water management facilities, financed or to be financed in whole or in part by private funds only if the
101 owner or developer (i) certifies to the governing body that the construction costs have been paid to the
102 person constructing such facilities; (ii) furnishes to the governing body a certified check or cash escrow
103 in the amount of the estimated costs of construction or a personal, corporate or property bond, with
104 surety satisfactory to the governing body or its designated administrative agency, in an amount sufficient
105 for and conditioned upon the construction of such facilities, or a contract for the construction of such
106 facilities and the contractor's bond, with like surety, in like amount and so conditioned; or (iii) furnishes
107 to the governing body a bank or savings institution's letter of credit on certain designated funds
108 satisfactory to the governing body or its designated administrative agency as to the bank or savings
109 institution, the amount and the form. The amount of such certified check, cash escrow, bond, or letter of
110 credit shall not exceed the total of the estimated cost of construction based on unit prices for new public
111 or private sector construction in the locality and a reasonable allowance for estimated administrative
112 costs, inflation, and potential damage to existing roads or utilities, which shall not exceed 25 percent of
113 the estimated construction costs. "Such facilities," as used in this section, means those facilities
114 specifically provided for in this section.

115 If a developer records a final plat which may be a section of a subdivision as shown on an approved
116 preliminary *subdivision* plat and furnishes to the governing body a certified check, cash escrow, bond, or
117 letter of credit in the amount of the estimated cost of construction of the facilities to be dedicated within
118 said section for public use and maintained by the locality, the Commonwealth, or other public agency,
119 the developer shall have the right to record the remaining sections shown on the preliminary *subdivision*
120 plat for a period of five years from the recordation date of the first section, or for such longer period as
121 the local commission or other agent may, at the approval, determine to be reasonable, taking into

consideration the size and phasing of the proposed development, subject to the terms and conditions of this subsection and subject to engineering and construction standards and zoning requirements in effect at the time that each remaining section is recorded. In the event a governing body of a county, wherein the highway system is maintained by the Department of Transportation, has accepted the dedication of a road for public use and such road due to factors other than its quality of construction is not acceptable into the secondary system of state highways, then such governing body may, if so provided by its subdivision ordinance, require the subdivider or developer to furnish the county with a maintenance and indemnifying bond, with surety satisfactory to the governing body or its designated administrative agency, in an amount sufficient for and conditioned upon the maintenance of such road until such time as it is accepted into the secondary system of state highways. In lieu of such bond, the governing body or its designated administrative agency may accept a bank or savings institution's letter of credit on certain designated funds satisfactory to the governing body or its designated administrative agency as to the bank or savings institution, the amount and the form, or accept payment of a negotiated sum of money sufficient for and conditioned upon the maintenance of such road until such time as it is accepted into the secondary system of state highways and assume the subdivider's or developer's liability for maintenance of such road. "Maintenance of such road" as used in this section, means maintenance of the streets, curb, gutter, drainage facilities, utilities or other street improvements, including the correction of defects or damages and the removal of snow, water or debris, so as to keep such road reasonably open for public usage;

6. For conveyance of common or shared easements to franchised cable television operators furnishing cable television and public service corporations furnishing cable television, gas, telephone and electric service to the proposed subdivision. Once a developer conveys an easement that will permit electric, cable or telephone service to be furnished to a subdivision, the developer shall, within 30 days after written request by a cable television operator or telephone service provider, grant an easement to that cable television operator or telephone service provider for the purpose of providing cable television and communications services to that subdivision, which easement shall be geographically coextensive with the electric service easement, or if only a telephone or cable service easement has been granted, then geographically coextensive with that telephone or cable service easement; however, the developer and franchised cable television operator or telephone service provider may mutually agree on an alternate location for an easement. If the final subdivision plat is recorded and does not include conveyance of a common or shared easement as provided herein, the local planning commission or agent designated by the governing body to review and act on submitted subdivision plats shall not be responsible to enforce the requirements of this subdivision;

7. For monuments of specific types to be installed establishing street and property lines;

8. That unless a plat is filed for recordation within six months after final approval thereof or such longer period as may be approved by the governing body, such approval shall be withdrawn and the plat marked void and returned to the approving official; however, in any case where construction of facilities to be dedicated for public use has commenced pursuant to an approved plan or permit with surety approved by the governing body or its designated administrative agency, or where the developer has furnished surety to the governing body or its designated administrative agency by certified check, cash escrow, bond, or letter of credit in the amount of the estimated cost of construction of such facilities, the time for plat recordation shall be extended to one year after final approval or to the time limit specified in the surety agreement approved by the governing body or its designated administrative agency, whichever is greater;

9. For the administration and enforcement of such ordinance, not inconsistent with provisions contained in this chapter, and specifically for the imposition of reasonable fees and charges for the review of plats and plans, and for the inspection of facilities required by any such ordinance to be installed; such fees and charges shall in no instance exceed an amount commensurate with the services rendered taking into consideration the time, skill and administrator's expense involved. All such charges heretofore made are hereby validated;

10. For reasonable provisions permitting a single division of a lot or parcel for the purpose of sale or gift to a member of the immediate family of the property owner in accordance with the provisions of § 15.2-2244; and

11. For the periodic partial and final complete release of any bond, escrow, letter of credit, or other performance guarantee required by the governing body under this section in accordance with the provisions of § 15.2-2245.

§ 15.2-2260. Localities may provide for submission of preliminary subdivision plats; how long valid.

A. Nothing in this article shall be deemed to prohibit the local governing body from providing in its ordinance for the submission of preliminary subdivision plats for tentative approval. The local planning commission, or an agent designated by the commission or by the governing body to review preliminary subdivision plats shall complete action on the preliminary *subdivision* plats within 60 days of

183 submission. However, if approval of a feature or features of the preliminary *subdivision* plat by a state
184 agency or public authority authorized by state law is necessary, the commission or agent shall forward
185 the preliminary *subdivision* plat to the appropriate state agency or agencies for review within 10 business
186 days of receipt of such preliminary *subdivision* plat.

187 B. Any state agency or public authority authorized by state law making a review of a preliminary
188 *subdivision* plat forwarded to it under this section, including, without limitation, the Virginia Department
189 of Transportation and authorities authorized by Chapter 51 (§ 15.2-5100 et seq.), shall complete its
190 review within 45 days of receipt of the preliminary *subdivision* plat upon first submission and within 45
191 days for any proposed plat that has previously been disapproved, provided, however, that the time period
192 set forth in § 15.2-2222.1 shall apply to plats triggering the applicability of said section. The Virginia
193 Department of Transportation and authorities authorized by Chapter 51 (§ 15.2-5100 et seq.) shall allow
194 use of public rights-of-way for public street purposes for placement of utilities by permit when practical
195 and shall not unreasonably deny plat approval. If a state agency or public authority authorized by state
196 law does not approve the plat, it shall comply with the requirements, and be subject to the restrictions,
197 set forth in § 15.2-2259 A with the exception of the time period therein specified. Upon receipt of the
198 approvals from all state agencies, the local agent shall act upon a preliminary *subdivision* plat within 35
199 days.

200 C. If a commission has the responsibility of review of preliminary *subdivision* plats and conducts a
201 public hearing, it shall act on the plat within forty-five days after receiving approval from all state
202 agencies. If the local agent or commission does not approve the preliminary *subdivision* plat, the local
203 agent or commission shall set forth in writing the reasons for such denial and shall state what
204 corrections or modifications will permit approval by such agent or commission. However, no
205 commission or agent shall be required to approve a preliminary subdivision plat in less than sixty days
206 from the date of its original submission to the commission or agent, and all actions on preliminary
207 subdivision plats shall be completed by the agent or commission and, if necessary, state agencies, within
208 a total of ninety days of submission to the local agent or commission.

209 D. If the commission or other agent fails to approve or disapprove the preliminary *subdivision* plat
210 within ninety days after it has been officially submitted for approval, the subdivider after ten days'
211 written notice to the commission, or agent, may petition the circuit court for the locality in which the
212 land involved, or the major part thereof, is located to enter an order with respect thereto as it deems
213 proper, which may include directing approval of the plat.

214 E. If a commission or other agent disapproves a preliminary *subdivision* plat and the subdivider
215 contends that the disapproval was not properly based on the ordinance applicable thereto, or was
216 arbitrary or capricious, he may appeal to the circuit court having jurisdiction of such land and the court
217 shall hear and determine the case as soon as may be, provided that his appeal is filed with the circuit
218 court within sixty days of the written disapproval by the commission or other agent.

219 F. Once a preliminary subdivision plat is approved, it shall be valid for a period of five years,
220 provided the subdivider (i) submits a final subdivision plat for all or a portion of the property within
221 one year of such approval or such longer period as may be prescribed by local ordinance, and (ii)
222 thereafter diligently pursues approval of the final subdivision plat. "Diligent pursuit of approval" means
223 that the subdivider has incurred extensive obligations or substantial expenses relating to the submitted
224 final subdivision plat or modifications thereto. However, no sooner than three years following such
225 preliminary subdivision plat approval, and upon ninety days' written notice by certified mail to the
226 subdivider, the commission or other agent may revoke such approval upon a specific finding of facts
227 that the subdivider has not diligently pursued approval of the final subdivision plat.

228 § 15.2-2269. Plans and specifications for utility fixtures and systems to be submitted for approval.

229 A. If the owners of any such subdivision desire to construct in, on, under, or adjacent to any streets
230 or alleys located in such subdivision any gas, water, sewer or electric light or power works, pipes, wires,
231 fixtures or systems, they shall present plans or specifications therefor to the governing body of the
232 locality in which the subdivision is located or its authorized agent, for approval. If the subdivision is
233 located beyond the corporate limits of a municipality but within the limits set forth in § 15.2-2248, such
234 plans and specifications shall be presented for approval to the governing body of such municipality, or
235 its authorized agent, if the county has not adopted a subdivision ordinance. The governing body, or
236 agent, shall have 45 days in which to approve or disapprove the same. In event of the failure of any
237 governing body, or its agent, to act within such period, such plans and specifications may be submitted,
238 after ten days' notice to the locality, to the circuit court for such locality for its approval or disapproval,
239 and its approval thereof shall, for all purposes of this article be treated and considered as approval by
240 the locality or its authorized agent.

241 B. Any state agency or public authority authorized by state law making a review of any plat
242 forwarded to it under this article, including, without limitation, the Virginia Department of
243 Transportation and authorities authorized by Chapter 51 (§ 15.2-5100 et seq.), shall complete its review
244 within 45 days of receipt of the plans, provided, however, that the time periods set forth in

245 § 15.2-2222.1 shall apply to plats triggering the applicability of said section. The Virginia Department of
246 Transportation and authorities authorized by Chapter 51 (§ 15.2-5100 et seq.) shall allow use of public
247 rights-of-way dedicated for public street purposes for placement of utilities by permit when practical and
248 shall not unreasonably deny plan approval. If a state agency or public authority by state law does not
249 approve the plan, it shall comply with the requirements, and be subject to the restrictions, set forth in
250 subsection A of § 15.2-2259, with respect to the exception of the time period therein specified. Upon
251 receipt of the approvals from all state agencies, the local agent shall act upon a preliminary *subdivision*
252 plat within 35 days.